SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 811

LEO H. HILL AND UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF UNITED STATES AND CANADA, LOCAL #234,
Petitioners,

vs.

STATE OF FLORIDA EX REL. J. TOM WATSON,
ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF FOR THE PETITIONERS

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The Opinion of the Court Below

The opinion of the Supreme Court of Florida is reported in 19 Sou. (2d) 857. A copy of such opinion is attached to the Petition for Writ of Certiorari filed herein as Appendix "A" and appears in the record herein on page 26.

Statement as to Jurisdiction

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February

13, 1935, Section 237(b), 28 U. S. C. A., Section 344(b). This case is one in which the validity of Sections 4 and 6 of H. B. 142 is drawn into question upon the ground that such sections on their face and as construed in the opinion of the Supreme Court of Florida are repugnant to the Constitution of the United States in various respects as more particularly set forth under the "Specification of Errors," infra. The decision of the Florida Supreme Court was in favor of the validity of the sections in question. The case was finally disposed of by the Courts of Florida when the Supreme Court of that State on November 28, 1944, rendered a decision upholding the decree of the Trial Court. The constitutional questions as set below were raised in every possible stage of the proceeding below. The answer to the complaint raised such questions; these federal questions were again raised in the Assignment of Errors on appeal to the State Supreme Court; such federal questions were briefed and argued before the State Supreme Court; and that Court passed upon these federal questions in its opinion. A case or controversy clearly exists between the parties to this litigation, the State having permanently enjoined one petitioner from functioning as business representative, and the other petitioner from functioning as a labor organization, until the petitioners have complied with the requirements of Sections 4 and 6. A petition for Writ of Certiorari was filed on January 3, 1945, and on February 5, 1945, this Court granted such writ.

Statement of the Case

This case was instituted by the filing of an action for injunction by the Attorney General of the State of Florida against Petitioner Leo H. Hill and Petitioner United Association of Journeymen Plumbers and Steamfitters of United States and Canada, Local 234 (hereinafter referred

to as Local Union No. 234) (R. 1). Petitioner Hill is an officer of said Local Union and is also President of the Florida State Federation of Labor. The Petitioner Local Union No. 234 is a labor organization affiliated with the United Association of Journeymen Plumbers and Steamfitters of United States and Canada, A. F. of L., and operates in the City of Jacksonville, Florida (R. 1). The injunction sought to enjoin the Local Union from functioning as a labor organization and Leo H. Hill from acting as business agent or representative of said Local, unless and until they complied with the requirements of Chapter 21968, Laws of Florida, Acts of 1943 (hereinafter sometimes referred to by its popular name of H. B. 142) (R. 3). A copy of such Act is attached to the Petition for Writ of Certiorari herein as Appendix "B".

H. B. 142 is an Act "regulating the activities and affairs of labor unions, their officers, agents, members, organizers and other representatives." Under the Act unions and union representatives are licensed, and the activities of labor organizations, including their internal affairs, are regulated and circumscribed, as for instance, by the limiting of union initiation fees under Section 5, by the prescribing of methods of accounting under Section 7, and by placing restrictions on union elections, and upon picketing and striking under Section 9.

The injunction was premised upon and sought to enforce Sections 4 and 6 of the Act, and these are the only sections of the Act which are involved in this petition for certiorari. Section 4 of the Act requires all paid union representatives to obtain a license from the State of Florida as a condition of acting as a representative of any labor organization, and sets up a Board authorized to receive applications for and to issue and revoke such licenses. More specifically, a license must be obtained by a labor

representative in order for him to act as a "business agent", which under Section 2(2) of the Act is defined as any person acting on behalf of any labor organization in "(a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees." Section 6 of the Act requires that labor organizations operating in the State file a statement containing the name of the organization, its location, and the names and addresses of its officials, and to pay an annual license fee, as a condition of functioning in the State.

After the defendants had filed an answer (R. 4) admitting and denying certain allegations of the complaint and asserting that Sections 4 and 6 violated the State and Federal Constitutions in various respects as more particularly set forth under the "Specification of Errors," infra, the case was submitted to the Trial Court on a stipulation that the court would consider the case upon the pleadings (R. 16). Under the pleadings and stipulation the following minimum facts have been established: that the defendant, Local No. 234, United Association of Journeymen Plumbers and Steamfitters of United States and Canada, is a labor organization or labor union within the commonly understood meaning of the term, consisting of a voluntary association of working people banded together for their mutual aid and protection, and is and has been functioning as such in the city of Jacksonville, State of Florida; that the defendant, Leo H. Hill, is a duly authorized and paid representative of said labor organization, acting on behalf of such labor organization and its members in the State of Florida, among other things, in the soliciting and procuring from employees membership or authorization cards in labor organizations in the process of organizing and soliciting and receiving from employers privileges and benefits for

employees in the process of collective bargaining; that such defendants had not complied with the requirements of Sections 4 and 6 of H. B. 142.

The Trial Court issued a final decree on June 22, 1942 under which it found that Sections 4 and 6 were valid constitutional enactments and under which the Court enjoined the defendant, Leo H. Hill, "from acting as business agent for said labor organization until he shall thereafter duly procure said license," and the defendant, Local No. 234, "from functioning and operating as a labor organization or labor union, until it shall thereafter duly make such report and pay said fee" (R. 18).

The defendants thereupon filed assignments of error, (R. 19), in which the constitutional questions were again raised, and appealed the case to the Supreme Court of Florida. After hearing argument the Supreme Court of Florida on November 28, in a unanimous decision, sustained the decree of the Circuit Court and declared that Sections 4[1] and 6 of the Florida Act did not violate any provisions of the Federal Constitution (R. 26).

Specification of Errors

The Supreme Court of Florida erred in the following respects:

1. In holding that Sections 4 and 6 of H. B. 142 and the injunction issued thereunder do not impose a previous general restraint on or constitute a denial of the exercise of civil rights of assemblage and speech in violation of the First and Fourteenth Amendments to the United States Constitution.

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[1] The trial court and the Supreme Court of Florida judicially excised from Section 4 of the Act the words "and are of the opinion that the public interest requires that a license or permit should be issued to the applicant." (R. 28.)

2. In holding that Sections 4 and 6, applicable only to non-railroad unions under the exemption from the Act under Section 15 of railroad unions, are not discriminatory and in violation of the equal protection of the laws clause of the Fourteenth Amendment.

3. In holding that Sections 4 and 6 and the injunction issued thereunder do not deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

4. In holding that Section 2(2) of H. B. 142, defining persons required to take out licenses under Section 4, is not so ambiguous as to deprive of due process of the law in violation of the Fourteenth Amendment to the United States Constitution.

Summary of Argument

I

Section 6, by requiring the filing of certain statements by labor organizations as a condition to their existence and functioning, operates to impose a previous general restraint upon the right of working people to assemble and function through labor organizations. Under Section 6 petitioner Hill and the other members of Local #234 have been permanently enjoined from meeting together and assembling with their fellow workers in Local #234 and in and through such organization to discuss their mutual problems, disseminate information, and petition for redress of grievance. Consideration of the general nature and purpose of labor organizations supports the conclusion that labor organizations are essential to the functioning of democracy in an industrial society, and that the association of working people in labor organizations is a concomitant of the right of speech, assembly, press and petition, and the right to form

and function through labor organizations has the same standing under the Federal Constitution as the right to form and function through political or religious organizations. The cases recently decided by this Court and discussed in petitioners' brief in No. 588, this Term, indicate clearly that the First Amendment assures the broadest tolerable exercise of assemblage, speech and press for economic purposes in and through labor organizations, as well as for political, scientific and religious purposes in and through political, scientific or religious organizations. Even if Section 6 be considered mere registration as a condition to the exercise of rights of assembly and speech, it nevertheless operates previously to restrain—and by the injunction issued under Section 6 to prohibit—the exercise of rights basic to our democracy—rights freely and unconditionally granted under the Bill of Rights. Petitioners' argument does not imply that the operations of labor organizations are above regulation or beyond the law. Specific abusive conditions and practices can be and have been made criminal without impairing the exercise of the bare right of assembly and speech.

Section 4, which seeks to license the right of union representatives to solicit membership in labor organizations, similarly restrains the exercise of rights of speech and press. Under Section 4 petitioner Hill has been permanently enjoined from soliciting membership in Local #234. Section 4 does not attempt to regulate the time, place or manner of solicitation or the use of public streets or other public facilities with regard to public convenience, and it does not merely require registration for the purpose of identification. It imposes an outright license upon the right to invite others to join a lawful movement, and the State reserves to itself complete discretion to withhold or withdraw the license. The solicitation licensed under Section 6

is not commercial solicitation as for the sale of a commodity for private profit. The solicitation licensed is of the same nature as solicitation by evangelists urging membership in a religious organization or by advocates of a political cause urging membership in a political party, or as the solicitation by any person urging membership in any laudable cause or movement, whether it be a political, economic, scientific or religious one. The cases indicate that the bare right so to solicit is a concomitant of free speech and press protected under the First Amendment and can be withheld only under circumstances of grave and immediate danger to interests which the State is free to protect.

II

Sections 4 and 6 are applicable only to associations of workers and not to associations of employers or other associations whose impact upon the public is similar to that of labor organizations; accordingly such sections are discriminatory. In particular such sections deny petitioner Local #234 equal protection of the laws, for the reason that other classes of labor organizations (unions of railroad employees) situated similarly to petitioner have been exempt from the requirement of such sections. The exemption of labor organizations of employees subject to the Railway Labor Act is arbitrary and without basis, the Railway Labor Act accomplishing none of the purposes of and having no relevance to the objectives of the Alabama law. There is no factual difference between the manner in which organizations of railroad employees function in so far as the requirements of Sections 4 and 6 are concerned and the manner in which organizations of nonrailroad employees function—as a matter of fact, both such organizations are

often affiliated with the same parent organization and operate under identical constitutions and by-laws.

III

Sections 4 and 6 deprive petitioners of rights granted under the National Labor Relations Act. Section 6, by restraining and conditioning every aspect of the "functioning" of labor organizations, conditions the right to engage in collective bargaining, as well as the right to engage in concerted activities for mutual aid and protection, although both such rights are unconditionally granted under Section 7 of the National Labor Relations Act. Section 4 seeks to license the right of union representatives to solicit employees to join a labor organization and seeks to license the right of union representatives to solicit benefits for employees in the process of collective bargaining, both of which rights are likewise unconditionally granted under the National Labor Relations Act. There exists an irreconcilable conflict between the requirements of Sections 4 and 6 and the exercise of rights granted under the National Labor Relations Act. The State cannot thus condition or limit rights granted by Congress in the effectuation of a valid Federal purpose lest such purpose be frustrated.

IV

Section 4 is so ambiguous as to deny due process of law. The definition of a "business agent", required to obtain a license under Section 4, does not sufficiently inform union representatives as to just when and under what circumstances it is necessary for them to procure a license in order to act. It is impossible to tell what acts are included under the term "the issuance of • • • rights granted or claimed in or by a labor organization," or by the term "soliciting or receiving from any employer any right or

privilege for employees." Criminal legislation phrased so vaguely that persons of reasonable intelligence would necessarily differ as to its meaning and application violates the first essential of due process.

ARGUMENT

I

Sections 4 and 6 and the injunction issued thereunder impose a previous general restraint upon and prohibit the exercise of civil rights granted under the First Amendment and protected against infringement by the State under the Fourteenth Amendment.

A. THE INVALIDITY OF SECTION 6

Section 6, although providing simply for the filing of annual reports, operates to impose an unlawful restraint upon the right of working people to assemble into and function through labor organizations. By virtue of Section 6 the State of Florida has enjoined petitioner Local #234 and its members "from functioning and operating as a labor organization or labor union" unless and until such union has complied with the filing requirements prescribed under Section 6. Such a prohibition means, of course, that the members of Local #234, including the petitioner Hill, cannot meet together for purposes of common consultation and discussion of their economic problems, or for purposes of disseminating information to the general membership, to workers in the same trade, or to the public generally concerning conditions in industry or the facts of any particular labor dispute; or for the purpose of jointly petitioning their employers, their State or Federal legislative representatives, or the general public, for the redress of grievances; or for the purpose of engaging in collective bargaining; or for

the purpose of conducting organizational campaigns and soliciting new members; or for any of the other usual purposes of labor organizations. The right to engage in any and all of these activities has been flatly and permanently denied petitioner Hill and all of the other members of Local #234 under the injunction which has been sustained by the Florida Supreme Court.

It is petitioners' contention that Section 6, with the pervasive threat of blanket injunction authorized thereunder, on its face imposes a previous general restraint upon the exercise by the members of Local #234 and petitioner Hill of their civil rights of assembly, speech and petition, and that such section, as applied in the present case, operates as an outright denial of such rights.

It should be noted at the outset that Section 6 does not strike at any particular abuse; all labor organizations and their members, of whatever class or character and whatever their purposes and manner of operation, are permitted to function in the State if the conditions of Section 6 are complied with.

Further, the difference between the effect of failure to comply with Section 6 of the Florida Act and failure to comply with the Revenue Act of 1943, Title I, Section 1, 17(a), 58 Stat. 36, 26 U. S. C. 54(f) requiring labor organizations to file certain statements in respect to their income, should be noted. Failure to file under the Federal Act merely imposes penalties upon those individuals responsible for the filing (53 Stat. 28, 26 U. S. C. 54(a)(b)(d), and 53 Stat. 62, 26 U. S. C. 145); it does not operate as a forfeit of all rights of the membership to meet and to engage in discussion and dissemination of information for their economic protection and advancement as does the Florida Act.

The basis upon which Section 6, as well as Section 4 and the injunction issued thereunder, was upheld by the State Court was stated to be as follows:

> "Labor unions, like other trade, professional and business organizations are concerned with the business of making a living. They do not bother themselves with the things that concern religious bodies, chambers of commerce and like institutions. It is on this basis that we say they are subject to the police power, . . . The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

The brief filed by the petitioners in *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, No. 588, October Term, 1944 sets forth (pages 25 to 41) the manner in which the formation and the day-to-day functioning of labor organizations involve the exercise of the civil rights of assembly, speech, press and petition. The distinction between regulation of a commercial activity and legislation generally restraining or conditioning the exercise of civil rights, is there referred to, and cases are cited which indicate that the bare right of working people to assemble into and function through labor organizations in the holding of meetings, the dissemination of information, and the petitioning for redress of grievances, is one protected under the First Amendment. As such, the right cannot be conditioned or licensed by the State, nor its effective exercise impaired or diminished. The Court is respectfully referred to that portion of the brief in No. 588 in support of petitioners' argument that Section 6 of the Florida Act, both on its face and as applied in the present case, is invalid.

It may be argued that the comparatively simple requirements of Section 6 do not involve the elements of a license,

as do the more elaborate requirements of Section 7 of the Alabama Act under the decision of this Court in *International Text Book* v. *Pigg*, 217 U. S. 106, and that Section 6 is merely a requirement of registration for the purposes of identification. But even if this be assumed, Section 6 must nevertheless fall. The majority of this Court has specifically indicated, in the recent case of *Thomas* v. *Collins*, decided January 8, 1945, No. 14, October Term, 1944, that the State has no power to impose even as much as a registration requirement as a condition to the exercise of any of the great rights established under the First Amendment as essential to the democratic process:

> "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

In any event, Section 6, as applied in the present case, involves a great deal more than mere registration. Section 6 has been utilized as a device for complete prohibition against the exercise of the rights of assembly and speech by requiring compliance with Section 6 as a condition of such exercise and making such condition the foundation for the blanket injunction imposed upon Local #234. This the State clearly cannot do.

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this

> can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order." (*Thomas* v. *Collins, supra.*)

It is respectfully submitted that Section 6 operates to restrain and condition, and as applied in the present case to prevent, the exercise by the members of Local #234 and petitioner Hill of their civil rights, and accordingly such section and the injunction issued thereunder must be held invalid under the decisions discussed in the Brief of Petitioners in No. 588, pages 27 to 39.

B. THE INVALIDITY OF SECTION 4

1. *The Effect of Section 4*

Section 4 of H.B. 142, which licenses union "business agents", even more clearly operates to restrain and deny the exercise of civil rights. Under Section 4 petitioner Hill has been enjoined from acting as a "business agent" for Local #234 unless and until he obtains the said license. The term "business agent" is defined in Section 2(2) of the Florida Act as including "any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any 'labor organization' in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees."

Thus, under Section 4, petitioner Hill must procure a license in order to solicit, and until he does so has been enjoined from soliciting, by word of mouth, by pamphlet or by any other form of communication, (1) membership in Local #234 and (2) benefits for members of Local #234 in the process of collective bargaining.

Although Section 2(2)(a) refers to and restricts the issuance of membership or authorization cards, the effect of the section is to restrict the solicitation of members. The Attorney General does not otherwise argue, and the Florida Supreme Court upheld Section 4 on the premise that it did involve a restriction on the solicitation of membership (R. 30). The limitation of Section 2(2)(a) to solicitation which involves the issuance of membership or authorization cards is not a limitation which permits petitioner nevertheless to exercise the essence of the right of solicitation; on the contrary, in order for solicitation into labor organizations to be at all effective, it is obviously necessary that the solicitor be enabled to accomplish the very object of this solicitation by obtaining membership applications or representation authorizations. The obtaining of membership or authorization cards is an integral part of the act of soliciting membership; it is a necessary incident to the exercise of the general right of solicitation. Solicitation for membership and participation in labor organization is no mere abstract exercise in liberty. Labor union members are permitted by law to utilize their organization as a medium of expression in collective bargaining only when they have succeeded in securing the adherence of a majority of their fellow workers in an appropriate unit. National Labor Relations Act, Sections 7 and 9. As a practical matter, it is necessary to submit application or membership cards to the National Labor Relations Board as evidence that the organization filing a petition under Section 9 of the National Labor Relations Act has a representation interest sufficient for the Board to act.[1] Thus, the freedom of the individual worker to speak effectively through his organization in collective bargaining is, in a very real way, dependent upon his freedom to solicit his fellow workers for

[1] See Eighth Annual Report, National Labor Relations Board, page 44.

authorization cards indicating their willingness to join with him. In substance and in effect, Section 4 clearly restricts the general right to solicit employees to join a labor organization.

The question at bar, then, is simply this: can a State license the right of union representatives to solicit employees to join a union, as distinguished from imposing a registration or identification requirement as a condition to the exercise of such right?

2. *The Distinction between a License and an Identification Requirement*

The distinction between a license and a registration or identification requirement is an important, in fact a controlling, one, and it should be noted at the outset that Section 4 is a licensing and not an identication requirement. The State uses the terms "license" and "permit" in Section 4; the Attorney General refers to the requirement of Section 4 as a "license" both in his complaint (R. 2,3) and in his argument (see Brief in Opposition to Petition for Writ of Certiorari, page 7); and the Florida Supreme Court regarded Section 4 as a licensing requirement throughout its opinion and did not attempt to make the distinction made by the Texas Supreme Court in the Thomas case (*Thomas* v. *Collins*, 141 Tex., 591), and refererd to by Mr. Justice Roberts in his dissent in *Thomas* v. *Collins, supra*, namely, that Section 5 of the Texas Act constituted merely a non-discretionary identification or registration requirement and not a license. Under Section 4 of the Florida Act, the State has reserved to itself complete discretion in the issuance of licenses to labor representatives, and such discretion has not been eliminated by the removal by the Florida Supreme Court of that portion of Section 4 stating that the license is conditioned, among other things, on the issuing board being "of the opinion that the public interest requires that a

license or permit should be issued to such applicant." Section 4 still provides for the suspension or revocation of licenses which presumably must be done in the discretion or good judgment of the Board having power to issue the licenses, and the section still provides for the filing of objections prior to the issuance of any license which, presumably, the Board would have jurisdiction and authority to pass upon. There is still a discretion lodged in a majority of the Board to find the applicant qualified pursuant to the terms of the Act, that is, to find that he has "good moral character" and has been a resident of the United States for a period of at least ten years prior to making application for a license. And finally, under Section 10 the Attorney General is authorized to institute proceedings for the revocation or suspension of licenses. See and compare the matter set forth in footnote 24 in the opinion of the majority in *Thomas* v. *Collins, supra.*

In any event, the exercise of civil rights is unduly impaired and burdened by the provisions in Section 4 for the holding of applications for permits on file for a period of thirty days, between which time any persons may make objections to the issuing of such permit, and for the provisions for further hearings upon such objections if made. The delay thus caused, even if no objections are filed, would entirely defeat the organizational process which, of necessity, requires that the right of solicitation be exercised freely and at any time when the necessity for the same arises.

3. *What is not involved under Section 4. The distinction between commercial solicitation and solicitation to join a lawful movement.*

It will assist in determining the validity of the requirements of Section 4 to note what is not involved under such section.

Section 4 does not attempt to regulate the time, place and manner of solicitation or the use of public streets or other public facilities, nor does it in any other way attempt to regulate solicitation with regard to public convenience. Once the license is procured, union representatives can solicit without restraint; if the license is not obtained, solicitation is entirely prohibited.

Section 4 is not limited to the solicitation of funds or sums of money. It licenses mere solicitation to join a labor organization when membership or authorization cards are issued in connection therewith. This may or may not involve assumption of a financial obligation to the union; in the case of authorization cards solicited for the purpose of making a representation showing, as before the National Labor Relations Board, it usually does not. Indeed, the whole purpose and end of the solicitation of membership has no necessary or immediate relationship to the collection of dues or fees. In seeking the support of their fellow workers for their organization, the members of a labor organization merely seek the formation of a collective bargaining entity authorized to express the voice of worker in the industrial forum. It is fairly common practice during the period of organization for the members of a union to attach no dues obligation to membership until a collective bargaining relationship has been established. And, of course, the right of a labor organization to represent its members depends solely on authorization and not on dues payment. *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 338-9; *National Labor Relations Board* v. *National Motor Bearing Co.*, 105 F. (2d) 652 (C.C.A. 9).

Finally, Section 4 does not seek to license mere commercial solicitation, as, for instance, solicitation to sell vacuum cleaners or razor blades for private profit. It does seek

to license solicitation which is in the nature of evangelism or other propagandization which seeks by personal solicitation to induce individuals to support or join some laudable and non-commercial cause or movement—in the case of labor organizations, solicitation to join a cause "needed and appropriate to enable the members of society to cope with the exigencies of their period." See *Thornhill* v. *Alabama*, 310 U. S. 88, at 101. It has been demonstrated in the brief filed by petitioners in *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, No. 588, October Term, 1944, pages 25 to 41, that labor organizations, as unincorporated, non-profit, voluntary associations of working people gathered together for purposes of mutual aid and protection, are a necessary institution in a modern industrial society if the aims of the democracy established under our Constitution are to be fulfilled; that such organizations are, in their formation and functioning, on the same plane as religious societies, political parties or scientific organizations. The assemblage of working people into labor unions and the solicitation of workers to join in the common cause of labor cannot be analogized to the formation of business concerns or the solicitation of sales for private profit. The solicitation of members necessarily involves the propagandization of ideas and the dissemination of beliefs. Any such invitation to join and take part in a common cause for a worthy objective can hardly be compared to solicitation in the sale of a commercial article for private profit, and it is submitted that the right to solicit membership in a labor organization has the same standing under the Federal Constitution as the right of evangelists to solicit membership in a religious organization, or as the right of advocates of a particular political cause to solicit membership in their political party, or as the right of any person to seek to induce others to join any laudable cause,

whether it be a political, economic, scientific or religious one. Such a right finds protection under the First Amendment as an exercise of freedom of speech, and, as such, it cannot be granted or withheld by the State through the requirement of a license or permit as a condition of its exercise, whatever might be the right of the State to regulate its exercise as to time, place and manner and as to identification of the solicitor.

4. *The applicable decisions.*

The cases make clear that this right of solicitation is one which the State can grant or withhold only under circumstances of grave and immediate or clear and present danger to interests which the State is free to protect.

The case of *Herndon* v. *Lowry*, 301 U. S. 242, turned upon the right of individuals to solicit membership in political parties. That case specifically held that the right to solicit membership in a political party was a concomitant of the right of free speech.

In *Fiske* v. *Kansas*, 274 U. S. 380, the Supreme Court directly held that the inducing or securing of persons to sign applications for membership in, or the issuing of membership cards in, a labor organization called the "Workers' Industrial Union," a branch of the Industrial Workers of the World, was a right entitled to constitutional protection when peacefully engaged in. In that case the defendant had been convicted of " 'knowingly and feloniously persuading, inducing and securing' certain persons 'to sign an application for membership in * * * and by issuing to' them 'membership cards' in a certain Workers' Industrial Union, 'a branch of and component part of the Industrial Workers of the World organization * * *' "; the case is an exact parallel to the instant case.

Hague v. *C. I. O.*, 307 U. S. 496, involved the exercise of rights of speech and assembly not merely by picketing and

distribution of handbills but further by the holding of meetings and solicitation of members. The opinion of Mr. Justice, now Chief Justice, Stone stated the issue before the Court to be the application of the guarantee of free speech and assembly under the First Amendment to protection against attempts by the public officers to prevent labor organizations "from holding meetings and disseminating information whether for the formation of labor organizations or for any other lawful purpose." (307 U. S. at 525.) Very specifically, the purpose of the meetings with which the city officials were enjoined from interfering was "to organize labor unions in various industries in order to secure to workers the benefits of collective bargaining with respect to betterment of wages, hours of work, and other terms and conditions of employment." (307 U. S. at 523.)

That the exercise of the right of free speech through the distribution of literature in connection with labor organization falls within as carefully protected a realm of personal rights under the Constitution as the distribution of literature for religious purposes has been specifically declared by this Court in *Martin* v. *City of Struthers*, 319 U. S. 141, 145-6:

> "'Pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of brining them to the notice of individuals is their distribution at the homes of the people.' *Schneider* v. *State, supra*, 308 U. S. 164. Many of our most widely established religious organizations have used this method of disseminating their doctrines, and laboring groups have used it in recruiting their members * * * Door to door distribution of circulars is essentially to the poorly financed causes of little people."

Cantwell v. *Connecticut*, 310 U. S. 296, sets forth the dangers of a licensing system and the distinction between licens-

ing and registration for purposes of identification. In that case the right to solicit adherents to and funds for a religious sect by door to door canvassing was involved. The Connecticut statute prohibited the solicitation of "money, services or subscriptions, or any valuable thing for any alleged religious, charitable or philanthropic cause" without the obtaining of a license. The Court upheld the appellants' contention that "to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution." In discussing the permissible restraints upon non-commercial solicitation, the Court stated as follows:

> "It is equally clear that a state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited." (310 U. S. at 304.)
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> * * * * * * *
>
> "The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that 'it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed. It is sug-

gested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

"To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action." (310 U. S. at 305-6.)

The foregoing statement sufficiently answers the contention of the Attorney General (Brief in Opposition to Petition for Writ of Certiorari, p. 8) that any abuse of discretion under Section 4 by the state licensing officers can be corrected by the courts.

Schneider v. Irvington, 308 U. S. 147, involved *inter alia* a statute of the town of Irvington, New Jersey, requiring a permit for any manner of house to house solicitation. The statute authorized, as does Section 4 of the Florida Act, refusal of a permit if the applicant was not of good character. The statute was applied to a member of a religious sect who had sought, by house to house canvassing, to solicit funds and to obtain adherents to her cause without obtaining a license. In striking down the ordinance as an infringement upon the rights of speech and petition, this Court noted a distinction between the type of solicitation there engaged in and ordinary commercial solicitation, and indicated that the solicitation for a religious cause was in

the same category as solicitation for an economic, social or political cause. The Court stated as follows:

> "While it affects others, the Irvington ordinance drawn in question in No. 11, as construed below, affects all those, who, like the petitioner, desire to impart information and opinion to citizens at their homes. If it covers the petitioner's activities *it equally applies to one who wishes to present his views on political, social or economic questions. The ordinance is not limited to those who canvass for private profit; nor is it merely the common type of ordinance requiring some form of registration or license of hawkers, or peddlers.* It is not a general ordinance to prohibit trespassing. It bans unlicensed communication of any views or the advocacy of any cause from door to door, and permits canvassing only subject to the power of a police officer to determine, as a censor, what literature may be distributed from house to house and who may distribute it. The applicant must submit to that officer's judgment evidence as to his good character and as to the absence of fraud in the 'project' he proposes to promote or the literature he intends to distribute, and must undergo a burdensome and inquisitorial examination, including photographing and finger-printing. In the end, his liberty to communicate with the residents of the town at their homes depends upon the exercise of the officer's discretion." (308 U. S. at 163-4)

* * * * * * *

> "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval; with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not, disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses

may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." (308 U. S. at 164.) (Emphasis supplied.)

Another statute before the Court in the *Schneider* case involved solicitation through the distribution of handbills by a union representative for public support in respect to a particular labor dispute, and this solicitation was upheld as a concomitant of the right of free speech.

Follett v. *McCormick*, 64 S. Ct. 717, involved a license fee on book agents which was applied to a distributor of religious literature. In striking down the license fee as a restraint upon freedom of speech and press, this Court very significantly stated as follows:

"The protection of the First Amendment is not restricted to orthodox religious practices any more than it is to the expression of orthodox economic views. He who makes a profession of evangelism is not in a less preferred position than the casual worker."

It would appear from this case that a worker who solicits individuals to join labor organizations as a means of spreading his economic beliefs, and receives contributions in the form of membership fees, is in no less a preferred position than a religious colporteur who distributes and sells religious literature as a means of spreading the distributor's religious beliefs.

Murdock v. *Pennsylvania*, 319 U. S. 105, involved the right of the State of Pennsylvania to impose a license tax upon the privilege of religious colporteurs to solicit funds in support of their organization by the house to house sale

of books and pamphlets. In holding that this right could not be previously restrained any more by a flat tax than it could be by a license, and in answering the argument that the license tax in question did not in fact restrain the activity, the Court stated as follows:

> "It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce. (McGoldrick v. Berwind-White Coal Min. Co., 309 U. S. 33, 56-58, 84 L. ed. 565, 576, 577, 60 S. Ct. 388, 128 A. L. R. 876), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. Id. 309 U. S. p. 47, 84 L. ed. 570, 60 S. Ct. 388, 128 A. L. R. 876, and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. * * * It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 U. S. pp. 607-609, 620, 623, 86 L. ed. 1706, 1707, 1713, 1715, 62 S. Ct. 1231, 141 A. L. R. 514. In that case as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, ad-

dresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the Constitution." Blue Island v. Kozul, 379 Ill. 511, 519, 41 N. E. (2d) 515. So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment." (319 U. S. at 112-4.)

In that case the Court indicated the distinction between solicitation for a religious or other non-commercial cause and purely commercial solicitation for the sale of a product for private profit. The Court stated as follows:

"Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in Jamison v. Texas, 318 U. S. 413, 417, ante, 869, 873, 63 S. Ct. 669. 'The state can prohibit the use of the streets for the distribution of purely commercial leaflets, even though such

leaflets may have "a civic appeal, or a moral platitude" appended. Valentine v. Chrestenson, 316 U. S. 52, 55, 86, L. ed. 1262, 1265, 62 S. Ct. 920. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes.' But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way." (319 U. S. at 110-11.)

The foregoing statement by this Court in the *Murdock* case also serves to answer the contention that Section 4 is valid because it is limited to solicitation by persons who receive pecuniary or financial consideration therefor. The receipt by petitioner of a pecuniary consideration in the form of a salary for his services no more operates to transmute his functions into a commercial category than does the payment of an income to a preacher or the payment of

a salary to a newspaper editor. As stated more recently in *Follett* v. *Town of McCormick, supra:*

> "Freedom of religion is not merely reserved for those with a long purse. Preachers of the more orthodox faiths are not engaged in commercial undertakings because they are dependent on their calling for a living."

Similarly, the State of Florida can derive no constitutional support for its statute by characterizing appellant and other labor spokesmen as "business agents" and thereby seeking to place them under regulation as though their activities constituted business or commercial transactions. As the Supreme Court said in *Near* v. *Minnesota,* 283 U. S. 697:

> "Characterizing the publication as a business and the business as a nuisance does not permit an invasion of the constitutional immunity against restraint."

The *Murdock* case, *supra,* further serves to answer the contention of the Attorney General that petitioners' argument seeks to place labor representatives above the law. Such an argument disregards the distinction between legislation narrowly drawn to prevent specific abuses and legislation which broadly restrains the exercise of constitutionally granted rights.

> "Jehovah's Witnesses are not 'above the law.' But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. Chaplinsky v. New Hampshire, 315 U. S. 568, 86 L. ed. 1031, 62 S. Ct. 766, supra. Nor do we have

here, as we did in Cox v. New Hampshire, 312 U. S. 569, 85 L. ed. 1049, 61 S. Ct. 762, 133 A. L. R. 1396, supra, and Chaplinsky v. New Hampshire, supra, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. * * * As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors * * * Nor can the present ordinance survive if we assume that it has been construed to apply only to solicitation from house to house. The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (Jones v. Opelika) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion." (319 U. S. at 116-17.)

More closely in point than any of the other cases above discused is the recent case of *Thomas* v. *Collins, supra.* There the status under the Constitution of the right of labor representatives to solicit membership in labor organizations was directly involved, and it is submitted that the case conclusively indicates that Section 4 of the Florida Act must be considered as transcending constitutional limitations. Although the *Thomas* case went off on the point that the solicitation of individuals involved in the case was inseverably combined with a general solicitation in the form of a speech, and although the majority holding was merely that the right to make such general solicitation in the form

of a speech cannot be either licensed or conditioned by the requirement of registration for identification purposes, there is sufficient in the dictum of the majority and in the holding of the dissent to indicate that Section 4, both on its face and as applied to petitioner in this case, must be considered invalid as constituting a previous general restraint upon the right of speech and press. In substance, the dictum in the majority opinion and the holding of the minority was to this effect: the solicitation of individuals to join a labor organization involves, but it does not entirely constitute, the exercise of free speech and press; as such, the right so to solicit cannot be entirely withdrawn or prohibited by the State as by a licensing system under which the State reserves the power to withhold the license, but it can be regulated as by the requirement of registration for identification purposes or as by the regulation of time, place and manner of soliciting with reference to the public convenience and safety. This, we respectfully submit, is law which reconciles the conflicting interests on the one hand of society in the protection of the public from possible abuses, and on the other hand of the individual in the exercise of his right of speech and press for the purpose of enlisting support in a lawful movement; and is law which is in harmony with the law pronounced in the cases from *Fiske* v. *Kansas* through the Jehovah Witnesses' cases above discussed.

Specifically, the dictum of the majority upon which petitioners rely is as follows. After stating that a requirement of registration in order to make a public speech to enlist support for a lawful movement is incompatible with the requirements of the First Amendment, the majority of the Court in the *Thomas* case went on to state:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free

discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitaiton would be quite different from the solicitation involved here. *It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider v. State, supra,* and *Cantwell v. Connecticut, supra.* That however must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly." (*Thomas v. Collins, supra.*) (Emphasis supplied.)

The regulation which the Court indicated was permissive in *Schneider* v. *State,* 308 U. S. 147, and *Cantwell* v. *Connecticut; supra,* was only in respect to time, place and manner of solicitation; or in respect to the imposition of a registration or licensing requirement; the Court was quick to invalidate any attempt by the State to withhold the bare right of solicitation.

"In these [Schneider, Cantwell] cases, however, the licensing requirements were far more than mere identification or previous registration and were held invalid because they vested discretion in the issuing authorities to censure the activity involved." (*Thomas* v. *Collins, supra.*)

The *Schneider* and the *Cantwell* and other related cases hold that the bare right of solicitation even of funds for non-commercial purposes was one which could not be licensed for the reason—a reason equally applicable in regard to the solicitation of members of a labor organization—that such solicitation unavoidably includes propagandizing in favor of, or disseminating information concerning, a lawful movement. It is one thing to require registration, or to prevent abuses incident to solicitation,

or to regulate the use of the public streets to suit public convenience; it is quite another thing to license the very right to solicit when such solicitation necessarily involves the dissemination of ideas and peaceful persuasion to associate with a laudable cause—in respect to labor organizations a cause which, as we have previously noted, is necessary "to enable the members of society to cope with the exigencies of their period."

In the *Thomas* case, the majority made clear that labor organizations

> "* * * cannot claim special immunity from regulation. Such regulation however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly. This Court has recognized that 'in the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. * * * Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society.' *Thornhill v. Alabama*, 310 U. S. 88, 102-103; *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478. The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly. *Hague v. Committee for Industrial Organization*, 307 U. S. 496. The Texas court, in its disposition of the cause, did not give sufficient weight to this consideration, more particularly by its failure to take account of the blanketing effect of the prohibition's present application upon public discussion and also of the bearing of the clear and present danger test in these circumstances." (*Thomas* v. *Collins*, *supra*.)

A similar comment is applicable to the disposition of the cause by the Florida court. Freedom of speech and press under the Bill of Rights relates to more than abstract discussion; it includes the right to persuade to a point of view and to take action in support of that point of view. It must include the right to persuade individuals to actively join in a lawful movement, whether that movement be religious, political, economic or scientific. The *Thomas* case makes clear that the First Amendment

> "• • • extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts. Cf. *Abrams* v. *United States*, 250 U. S. 616, 624, and *Gitlow v. New York*, 268 U. S. 652, 672, dissenting opinions of Mr. Justice Holmes. Indeed, the whole history of the problem shows it is to the end of preventing action that repression is primarily directed and to preserving the right to urge it that the protections are given.
>
> "Accordingly, decision here has recognized that employers' attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guaranty. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469. Decisions of other courts have done likewise. When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. Cf. *National Labor Relations Board v. Virginia Electric & Power Co., supra.* But short of that limit the employer's freedom cannot be impaired. *The Constitution protects no less the employees' converse right.* Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection." (*Thomas v. Collins, supra.*) (Emphasis supplied.)

The dissenting opinion in the *Thomas* case upheld Section 5 of the Texas statute because, as was indicated by the Supreme Court of that State, the section did not repose any discretion in the State to withhold the right to solicit membership but merely required identification of persons pursuing solicitation of members for an organization as a business:

> "* * * if anyone pursues solicitation as a business for profit, of members for any organization, religious, secular or business, his calling does not bar the state from requiring him to identify himself as what he is—a paid solicitor."

There is no suggestion in the dissent that the right to solicit membership in any religious, secular or business organization could be licensed by the State, or its exercise granted or withheld in the discretion of the State. On the contrary, the dissent made clear that in respect to Section 5 of the Texas Act

> "To comply with the law the appellant need only have furnished his name and affiliation, and his credentials. The statute nowise regulates, curtails, or bans his activities."
>
> * * * * * * *
>
> "We should face a very different question if the statute attempted to define the necessary qualifications of an organizer; purported to regulate what organizers might say; limited their movements or activities; essayed to regulate time, place or purpose of meetings; or restricted speakers in the expression of views. But it does none of these things." *(Thomas* v. *Collins, supra.)*

It is respectfully submitted that, under the cases above discussed and in particular under the *Thomas* case, Section 4 of the Florida Act purporting to license labor representa-

tives in the solicitation of members, and empowering the State to withhold the license in its discretion, constitutes a previous general restraint upon the exercise by petitioner Hill of his rights of press, speech and petition and, as such, must be declared invalid on its face. It is further submitted that Section 4, as applied to petitioner Hill, in so far as it seeks permanently to enjoin him from seeking to solicit by any form of oral or written communication membership in Local #234, constitutes a denial of his right to speech, press and petition, and for that reason must be declared invalid.

II

Sections 4 and 6 deny petitioners equal protection of the laws in violation of the Fourteenth Amendment.

The Florida Act, like the Alabama Act involved in *Alabama State Federation of Labor, et al.*, v. *McAdory, et al.*, No. 588, October Term, 1944, is directed solely against one type of voluntary association—namely, labor organizations—and, like the Alabama Act, exempts "all railway labor organizations and the members thereof • • • as long as they are regulated by any act or acts of the Congress of the United States." Accordingly, the Florida Act is subject to the same objections under the equal protection of the laws clause of the Fourteenth Amendment that have been made against the Alabama Act in the brief filed by petitioners in No. 588, and the attention of the Court is respectfully directed to pages 57 to 67 of that brief for a discussion in support of the argument that Sections 4 and 6 of the Florida Act are discriminatory and deny petitioners equal protection of the laws.[2] The purpose and objectives ac-

[2] In holding that the Florida Act did not violate the equal protection of the laws clause of the Fourteenth Amendment, the Florida Supreme Court

complished by the Railway Labor Act are no more relevant to the purposes and objectives of the Florida Act than they are to those of the Alabama Act; the fact that unions of railway employees are covered by the Railway Labor Act while other unions are not is no indication whatsoever that "the danger is characteristic of the class named." (See Brief in Opposition to Petition for Writ of Certiorari, p. 14.) Clearly, it is discrimination in the highest degree to require the filing of statements by Local #234 as a condition of its functioning, while permitting another local affiliated with the same parent body—the United Association of Journeymen Plumbers and Steamfitters of United States and Canada—to operate without such restriction merely because the members of that local are employed by railroad companies. And surely, it is a denial of the equal protection of the laws to require a license of a business agent of Local #234 as a condition of soliciting membership or soliciting employee benefits in the process of collective bargaining, while not requiring such a license for the business agent of another local of the parent union to do the same acts when the members of that local are under the Railway Labor Act.

III

Sections 4 and 6 and the injunction issued thereunder deprive of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

A. SECTION 6

Section 6 of the Florida Act, like Section 7 of the Alabama Act, seeks to condition the right of labor organizations to

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relied solely upon the decision of the Alabama Supreme Court in the *McAdory* case (*Alabama State Federation of Labor, et al.*, v. *McAdory*, 18 So. (2d) 810) (R. 34). *American Federation of Labor* v. *Reilly*, re-

"function" in the State unless certain state-imposed conditions are met. Indeed, the State of Florida has permanently enjoined petitioner Local #234 from "functioning and operating as a labor organization or labor union" unless and until it complies with such Section 6.[3]

It is, of course, one of the "functions" of labor organizations to engage in collective bargaining and any other concerted activities for the purpose of mutual aid and protection. The right to engage in such activities is specifically granted under Section 7 of the National Labor Relations Act, which provides that "employees shall have the right • • • to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection." To prohibit a labor organization from functioning at all, then, is clearly a denial of this right and operates to frustrate the policy of Congress, which is "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, or the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

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ferred to by the Alabama Court, is a trial court decision which was subsequently reversed by the Colorado Supreme Court, the Colorado Act being held unconstitutional on other grounds (*American Federation of Labor, et al.*, v. *Reilly, et al.*, No. 15446, decided December 21, 1944).

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[3] Petitioner Local #234 has a standing to challenge the constitutionality of Section 6 as being in conflict with the National Labor Relations Act for the reason that under the stipulation that the cause be determined upon the pleadings, without the taking of testimony (R. 17), it appears that the Florida Act does affect and involve employees and employers engaged in interstate commerce and otherwise subject to the National Labor

It is submitted, accordingly, that Section 6, both on its face and as applied to petitioner Local #234, violates Article VI of the Federal Constitution (declaring that the laws of the United States are supreme) by denying rights granted by Congress and thereby thwarting effectuation of a valid Federal purpose. The discussion in petitioners' brief in No. 588 respecting the invalidity of Section 7 of the Alabama Act as being in conflict with the National Labor Relations Act is applicable to the argument that Section 6 of the Florida Act is invalid, and the Court is respectfully referred to such discussion on pages 68 to 71 of such brief.

B. SECTION 4

Section 4 seeks to license two types of activity, the right to engage in which is unconditionally granted under the National Labor Relations Act. By virtue of the definition of "business agent" in Section 2(2) of the Florida Act, union representatives must obtain State permission in order to solicit employees to join and in order to issue or obtain membership or authorization cards in connection with such solicitation. Further, such permission must be obtained in order for such a representative to solicit benefits for employees in the process of collective bargaining. The discussion under Point I of this brief makes clear that the right to solicit membership and obtain authorization or membership cards is an indispensable concomitant of the right of self-organization. The right of self-organization is specifically

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Relations Act, and it is specifically alleged that such Act is in conflict with the National Labor Relations Act (R. 9-10). As a matter of fact, the members of Local #234 are employed by a large number of employers who are engaged in interstate commerce and who are subject to the National Labor Relations Act, and no challenge to this fact was made until the case reached this Court, the Supreme Court of Alabama and the trial court both having proceeded upon the assumption that petitioners were in a position to raise the issue of conflict with the Wagner Act. Under such circumstances, respondent cannot call the existence of these facts into question at this late time. See *Brown* v. *Garrett*, 201 U. S. 184.

granted under Section 7 of the Act, and protection of that right is declared to be the policy of the United States under Section 1 of the Act. This right of self-organization could hardly be realized if solicitation to join a labor union or the issuance of membership or authorization cards to prospective members by union represntatives were forbidden; nevertheless the State has asserted a privilege to forbid such solicitation. In *Thomas* v. *Collins, supra*, this Court said:

> "The campaign, and the meeting, were incidents of an impending election for collective bargaining agent, previously ordered by national authority pursuant to the guaranties of national law. Those guaranties include the workers' right to organize freely for collective barghining. And this comprehends whatever may be appropriate and lawful to accomplish and maintain such organization. It included, in this case, the right to designate Local No. 1002 or any other union or agency as the employees' representative. It included their right fully and freely to discuss and be informed concerning this choice, privately or in public assembly. Necessarily correlative was the right of the union, its members and officials, whether residents or nonresidents of Texas and, if the latter, whether there for a single occasion or sojourning longer, to discuss with and inform the employees concerning matters involved in their choice."

Section 9 of the National Labor Relations Act permits labor organizations or individuals to petition the National Labor Relations Board for certification of a particular labor organization as the exclusive collective bargaining representative of all the employees in an appropriate bargaining unit. As a matter of procedure,[4] Section 9 cannot be invoked without submitting to the Regional Director of any particular region authorization or membership cards

[4] Eighth Annual Report, National Labor Relations Board, p. 44.

as evidence in support of the petitioning union's claim that it represents a sufficiently substantial number of employees to warrant the Board's ordering a hearing and calling an election.

The restriction on soliciting benefits from employers in the process of collective bargaining is equally in conflict with the National Labor Relations Act and for reasons similar to those stated for the invalidity of Section 6. The right to engage in collective bargaining and to obtain benefits under that process by and through duly appointed representatives must exist other than at the sufferance of the State if the basic purposes of the National Labor Relations Act are to be achieved.

That the requirements of Section 4 do in practical effect prevent engaging in activities and pursuing rights established under the National Labor Relations Act is no mere supposition; in *In the Matter of Eppinger & Russell Company*, 56 N. L. R. B. No. 226, the National Labor Relations Board had before it a case in which a Florida employer had refused to bargain with a Florida union through a Florida business agent for the reason that such business agent had not obtained a license to act as the Union's representative under Section 4. The Board, in a unanimous decision, held that the employer in so refusing had violated the provisions of the National Labor Relations Act by denying rights established thereunder, and that the provisions of the Florida law relied upon by the employer to excuse his breach of the National Labor Relations Act "must yield before the paramount authority of Congress expresesd in a valid and applicable federal law."

It is submitted that, under the decisions discussed in petitioners' brief in No. 588, Sections 4 and 6 must be declared invalid under Article VI of the United States Consitution as being in conflict with the Federal Act in a

field in which the Federal government has paramount authority.

IV

Section 2(2), upon which Section 4 is dependent for operation, is so ambiguous as to deny due process of law.

The Florida Act, like the Alabama Act, creates crimes not known to the common law, and under it heretofore innocent acts customarily engaged in are apparently made wrongful. As stated in the brief filed in No. 588 (pages 71 to 75), it is incumbent upon the State in thus creating crimes to be sufficiently explicit to inform as to just what conduct on the individual's part will render him liable to criminal penalties. The State cannot compel an individual to speculate at his peril concerning either the meaning of a particular statute or its application to him.

It is submitted that the definition of a "business agent" contained in Section 2(2) of the Florida Act does not sufficiently inform a representative of a union as to just when and under what circumstances it is necessary for him to secure a license in order to act. For instance, what constitutes an "evidence of rights granted or claimed in, or by, a labor organization" under subsection (a) of the definition? Certainly, a contract or any other legal document drawn up by an attorney for a labor organization for a fee would seem to come under this clause, and accordingly attorneys can henceforth act for labor organizations, draw up bills of sale, contracts, deeds, or any other written documents, only at the peril of being criminally prosecuted for a violation of H. B. 142 if they have not applied for and received licenses as business agents. A right granted, or claimed, in or by a labor organization may be any one of a thousand things; the term is so indefinite as to make impossible even citing a hypothetical example of what might be attempted.

Subsection (b) is equally ambiguous. What is meant by "receiving from an employer any right or privilege for employees"? A "right" or "privilege" in respect to what? And what particular type of a "right" or "privilege" out of the thousands known finding a status as such under the law? How is it possible for an educated layman or even an attorney, let alone a union member whose opportunities for education may have been limited, to determine just what is intended by this clause?

It is respectfully submitted that petitioner Hill and other members of Local #234 cannot be required to speculate at their peril concerning the meaning of these very ambiguous subsections, and that under the principles set forth on pages 71 to 75 of petitioners' brief in No. 588 Section 4 must be declared invalid as a denial of due process.

Conclusion

It is respectfully submitted that, under the decisions cited and discussed in the foregoing arguments, petitioners have been denied and deprived of rights granted and secured under the Constitution and Laws of the United States by reason of Sections 4 and 6 of the Florida Act and the injunctions issued thereunder, and that accordingly the decision of the Florida Supreme Court should be reversed.

Respectfully submitted,

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